GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Inspector General

Inspector General

March 24, 2003

The Honorable Vincent B. Orange, Sr.
Chairperson, Committee on Government Operations
Council of the District of Columbia
1350 Pennsylvania Avenue, N.W., Room 108
Washington, D.C. 20004

Re: Inspector General Qualifications Amendment Act of 2003 (Bill 15-183); Inspector General Qualification Emergency Declaration Resolution of 2003 (PR 15-118); Inspector General Qualifications Emergency Amendment Act of 2003 (Bill-15-200); and Inspector General Qualifications Temporary Amendment Act of 2003 (Bill 15-201)

Dear Councilmember Orange:

The purpose of this letter is to provide follow up information to you concerning our discussion of your reasons for introducing Bill 15-183 at the March 7, 2003, performance review for the Office of the Inspector General (OIG). This letter is being submitted for the record at the Public Roundtable scheduled for today on "The Performance of the Office of the Inspector General: A Follow-Up." This letter also responds to your justification for introducing the remaining legislation (referenced above) at the Council's legislative meeting on March 18, 2003. As you know, this series of legislation seeks to change – approximately two-thirds of the way into my six-year term – the qualifications for the position of Inspector General, which would force me to vacate my Office on June 1, 2003.

Key elements of Public Law 104-8 suggest that Congressional intent is not limited exclusively to the operations of the District. To the contrary, it is clear that Congress established a specific framework regarding the qualifications, length of term, method of removal (by the Mayor for cause), budget approval (by Congress), and reporting requirements (to the U.S. Attorney General and to Congress), which may not constitute "local" law that the D.C. Council has the authority to amend or repeal under the provisions of the Home Rule Act. *See* D.C. Code § 1-206.02(a)(3) (2001). In addition, the legislation that you have introduced violates the U.S. Constitution in that it singles out only one person to be disadvantaged without the benefit of due process. *See* Art. I, § 9, cl. 3; *see also United States v. Lovett*, 328 U.S. 303 (1946) (holding that a Congressional

act prohibiting the payment of salaries for named executive branch employees from appropriated funding (except as jurors or members of the armed forces) violated the Constitution's proscriptions against bills of attainder and *ex post facto* laws). Finally, the bill purports to allow the Council to exercise a power not entrusted to it – the ability to unilaterally remove an executive branch official – which is properly reserved to the authority of the Mayor under D.C. Code § 2-302.08(a)(1).

Given the bill's adverse impact on the independence that Congress intended for the OIG, it is imperative that I respond in a comprehensive manner to your stated reasons for sponsoring this legislation: (1) that my Office failed to investigate a July 20, 2001, tip from an Office of Human Rights (OHR) employee that contracts were being steered to Curtis Lewis & Associates because of Lewis' connections to Mayor Anthony Williams; (2) that our "subpoena" of electronic back-up copies of the city's electronic voter registry at the Board of Elections and Ethics (BOEE) resulted in the loss of information and confusion concerning the assignment of some voters to their voting precincts; (3) that I have failed to provide you with details of ongoing investigations; and (4) that my Office conducted an investigation concerning the Office of Campaign Finance (OCF) in retaliation for fines levied against the Mayor in July 2002.[1]

1. The OIG did not fail to investigate the July 20 tip from the OHR employee. We received that tip on that date and fully investigated the tip. However the tip did not concern Curtis Lewis & Associates, which the complainant later confused with a different legal contract that was the subject of her dealings with the OIG.

In a memorandum dated March 5, 2003, you advised U.S. Congressman Tom Davis and Delegate Eleanor Holmes Norton that this bill "was prompted in part by Inspector General Charles Maddox's failure to investigate the Curtis Lewis & Associates DC contracts," noting that in July 2001 an employee of the DC Office of Human Rights informed the Inspector General that contracts were being steered to Curtis Lewis, the brother of Washington Teachers' Union treasurer, James O. Baxter II. You further indicated to the congressional representatives that "[c]learly the IG had an opportunity and obligation to investigate these allegations in 2001, and perhaps expose one of the biggest scandals in DC history." **Exhibit A.**

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[1] PR 15-118 also alleges that the two issues raised by Council over a year ago - my residency and bar membership status - remain in question. However, my compliance with residency laws and service as the OIG's general counsel are settled issues. The independent investigators you requested to settle the matter concluded unequivocally that I meet the D.C. residency law requirements. There has never been any legitimate question that I met the professional requirements for all the positions I have held at the OIG. Your continued assertions that these matters remain in question, without asserting new facts, remain baseless.

By letter dated March 5, 2003, you advised the Mayor and the Council that on July 20, 2001, an employee of the D.C. Office of Human Rights relayed to my office "'violations by Holman [Director of OHR] regarding contract awards to Curtis Lewis and Associates that exceeded Holman's contracting authority . . . that Curtis Lewis was not producing quality legal services and their letters of determination [LODs] required additional and substantial work by the OHR staff.'" **Exhibit B.**

In fact, the OIG did receive a written complaint against Mr. Holman from an OHR employee on July 20, 2001, alleging payment to an attorney without benefit of a contract and approval of payment for work that was not performed. **Exhibit C.** However, I must reiterate that *this complaint in no way involved the law firm of Curtis Lewis & Associates but instead concerned a different law firm.* At no point in the written complaint is there any mention of Curtis Lewis & Associates. Because the facts in the July 20 complaint so closely mirror those in the letter provided to you, it seems clear that we are all concerned with the same allegation – *except that the OHR employee has either erroneously or purposefully substituted Curtis Lewis as the name of the subject.*

It should be noted that my Office did in fact conduct a full investigation into all of the allegations received from the OHR employee against Mr. Holman. Because these cases are now closed, I can comment on them. With respect to the July 20, 2001, complaint that is described in your letter, I can advise you that a full report of investigation was written and sent to the Mayor, substantiating the allegation that Holman allowed payment for services without benefit of a contract. The allegation regarding payment when services were not rendered was unsubstantiated. An executive summary of the report was sent to each member of the D.C. Council on September 19, 2002. **Exhibit D.**

My Office has also received and investigated other allegations against Mr. Holman by his employees. These allegations involved the misuse of a government travel card and the acceptance of gifts, both of which were investigated and found to be unsubstantiated. At no time did Mr. Holman or any employee of Mr. Holman advise my Office of any misconduct involving Curtis Lewis & Associates. *See* **Exhibit E**, a side-by-side comparison of testimony of the OHR employee and our responses concerning the nature of allegations that she referred to us, and **Exhibit F**, a chronology of the investigation.

The documents that you provided us during the March 7th hearing alleging contract steering that the employee claims she provided to us are not addressed to us, and we are certain that they have not been received by us or described to our investigators. Our investigators have assured us that they did not receive them. In fact, a search of our electronic records did not indicate that the OIG received these documents.[2] Because our Office has handled several complaints from and about this employee and Mr. Holman, we have been careful to investigate and document each allegation. It is our practice to

[2] For verification, we have asked the Office of the Chief Technology Officer to conduct its own search in order to determine whether the documents were ever sent to the OIG and deleted.

coordinate information among the executive staff whenever complaints are received against agency heads and elected officials to ensure that any allegations against those in the highest position of trust are addressed. Accordingly, we would have addressed any steering allegation made by or against Mr. Holman in July 2001 in the same fashion that we did for all of the other allegations against him that we actually received.

Pursuant to your request, we have attached the three documents the OHR employee gave to our investigator during an August 9, 2001, interview at the OIG that mention Curtis Lewis & Associates. **Exhibits G, H, and I**. As we informed you during the March 7th performance hearing, the OHR employee presented these three documents, along with numerous others, during that interview to substantiate her claims regarding Mr. Holman's procurement of the Vere Plummer contract and Mr. Holman's alleged acts of harassment toward her. You will note that none of these documents references allegations of contract steering to Curtis Lewis & Associates or that anyone pressured Mr. Holman to award contracts to this firm.[3]

Finally, it was Mr. Holman – and not any of his employees - who made public the allegation that former Washington Teachers Union president Barbara Bullock pressured him to award a contract to Curtis Lewis & Associates to handle filings for the Office of Human Rights. This information was set forth in the pleadings of a lawsuit he filed against the District, and reported in the *Washington Post* on September 14, 2002, in close proximity to the discovery during an audit that funds were missing from the union. While I am unable to comment with specificity concerning this matter, I can assure you that the information is being addressed appropriately.

2. The OIG did not subpoena the back up electronic files for BOEE voter rolls. Instead, we executed a search warrant for evidence of a criminal violation. The 2002 election process was not compromised because the OIG obtained the assistance of trained forensic computer experts from the Federal Bureau of Investigation who – on a Friday evening - retrieved the electronic information responsive to a lawful search warrant, copied the information, and returned the original, unaltered electronic information to the BOEE within five hours.

Statements attributed to you by the W*ashington Post* in a March 7, 2003, article are factually inaccurate. First, we did not issue a subpoena for the District of Columbia voter rolls; rather, we executed a search warrant at the BOEE on August 2, 2002. This distinction is important because a search warrant cannot be unilaterally issued by my Office. Instead, a search warrant requires the concurrence of a federal prosecutor and a judge. It can only be issued upon a showing of evidence that probable cause exists to believe that a crime has been committed. Furthermore, the timing for execution of a search warrant falls within the sole discretion of the federal prosecutor, not the OIG.

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[3] The documents mention Curtis Lewis & Associates, but not with reference to any allegation of misconduct concerning either Mr. Holman or Mr. Lewis.

Because my Office did not possess the expertise or equipment to conduct the necessary forensic review of electronic data, we did not take custody and examine the seized items. We solicited the assistance of forensic expert Special Agents from the Federal Bureau of Investigation (FBI) and the FBI assumed custody of the seized items for examination and duplication at the FBI's forensic laboratory in Virginia. The search warrant directed the seizure of all documents stored electronically on the Board's network server and back-up tapes that related to our investigation. The timing of the execution of the search warrant was due to a concern that the evidence sought by the warrant could be destroyed or otherwise deleted from the BOEE's servers.

To avoid any disruption of BOEE's activities, I directed my agents to execute the search warrant after working hours and requested that all items seized be returned to BOEE expeditiously. Therefore, we executed the warrant on a Friday evening, at 5:59 p.m. BOEE officials requested that we return the servers by 7:00 a.m. the next morning. We were able to return the servers by 11:21 p.m., that same evening. All of our activities in executing the warrant were witnessed by BOEE officials.

To further mitigate any interference with the agency's operations, the agents, upon arrival, described exactly what information was to be seized as outlined in the search warrant. The agency's chief technology officer could not identify in which server the documents were stored. Therefore, the FBI forensic expert determined which servers met the search warrant requirements.

At no time did OIG personnel manipulate or alter the information stored on the servers or back-up tapes. Instead, these items were immediately transported to the FBI's forensic laboratory in accordance with the search warrant. FBI forensic experts merely copied the information from the servers at the laboratory, and the agents immediately transported the servers directly back to BOEE after this process was completed. When we returned that evening, the FBI forensic expert ensured that the servers were installed and properly functioning. The installation of the servers was witnessed by a BOEE official.

The back-up tapes remained at the FBI laboratory for review and then were returned, unaltered, to BOEE at a later date. Information in our custody is limited to copies provided by the FBI. We have been advised by the FBI that the back-up tapes are in fact cleaning tapes and contain no information whatsoever. We have received assurance from the FBI that no manipulation of the back-up tapes occurred while in their custody.

3. Contrary to your frequent public statements, I have attempted to establish a mode of communication with your office, to no avail. Instead, you have chosen to present your questions or concerns regarding OIG matters to other officials and the press, without addressing them with me in the first instance. I clearly demonstrated my full intent to keep you informed about the serious nature of the allegations we received when, early on

in the BOEE investigation, I briefed Chairperson Cropp and you on the general parameters of the investigation.

Your concern that I intentionally withhold information from you to protect the Mayor is equally unfounded. As you are aware, when you became the Chairperson for the Committee on Government Operations in January 2002, I immediately attempted to initiate regular meetings with you - as I had done with your predecessor for two years - in the interest of establishing a mode of communication between our offices. Despite written and verbal requests by my Office, you repeatedly cancelled our meetings and made no attempts to reschedule them. Since that time, it has been your practice to pose your questions and lodge your complaints concerning OIG's matters directly to the Mayor and to the press without allowing my Office the opportunity to respond first.

Such has been the case with the current investigation involving the personnel practices of the BOEE. As mentioned before, early on in the investigation, I briefed you, as well as Chairman Cropp, on the general parameters of the investigation because the underlying allegations of fraud and other misconduct concerned the District government's highest ethics officials. Then, in November 2002, the Mayor's Office informed me that you had formally requested my termination or resignation based on: (1) a "subpoena" served by OIG and FBI agents during the course of the BOEE investigation; and (2) my discussions with Congressional staff members regarding the "Excepted and Executive Service Domicile Requirement Amendment Act of 2002." At no point in time did you bring either of these concerns to my attention directly so that I could address them. To make matters worse, after the Mayor forwarded my response to you, you raised these same two issues again, this time as part of your justification for removing me from my position via Bill 15-183 - again without discussing the matters with me.

The only information that I have refused to discuss with you has been details from ongoing investigations. In that regard, I have been both clear and consistent in my dealings with you, the rest of the Council, the Mayor, and the press. There are several reasons for this: first, all of our criminal cases are supervised by the United States Attorney's Office and must be kept confidential until a person is charged or prosecution is declined; second, many of our cases are investigated jointly with other law enforcement agencies, such as the FBI or the MPD, who rely on us not to reveal information that could compromise an ongoing investigation; third, many of our investigations are matters before the secret proceedings of a grand jury; fourth, the integrity of investigations must be maintained to, *inter alia*, prevent alerting the subject of the scope of the inquiry and to protect confidential sources.

4. The OIG does not retaliate against any agency. To the contrary, this Office adheres to the mandate of our authorizing statute that we conduct independent investigations. In the case of BOEE, we received several Whistleblower complaints in April 2002 regarding mismanagement, fraud, and failure to enforce campaign violations. As a result, the OIG initiated an investigation, which is ongoing at this time.

For the reasons stated above, I am unable to comment in detail on any investigation that is pending. In general terms, however, I can disclose that my Office has received numerous allegations indicating abuse of authority, preferential treatment, fraud, and obstruction of justice from concerned OCF employees over a long period of time. Our receipt of these allegations certainly predates BOEE's investigation of false petition signatures in July 2002. Not only do these complaints imply deeply ingrained institutional corruption within BOEE and OCF, but they also raise the concern that insufficient oversight is being provided by the Chairman of the Board of Elections and Ethics. Perhaps most disturbing are allegations suggesting failure on a regular basis to enforce campaign laws in an impartial manner. As you know, failure to investigate such serious allegations certainly would be in violation of core OIG responsibilities.

My investigations may exonerate people, or they may not. Either way, it is not appropriate for anyone to discourage me from asking the right questions when I am made aware of serious allegations. I have a mandate in law to seek justice, without political interference, no matter where the trail leads. The citizens of the District of Columbia deserve no less.

Sincerely,

Charles C. Maddox, Esq.
Inspector General

cc: Anthony A. Williams, Mayor
John A. Koskinen, City Administrator
Linda W. Cropp, Chairman, D.C. Council
D.C. Councilmembers

Enclosures